IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7805 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VORA SAKIRHUSEIN MOHOMEDHUSEIN

Versus

BHIL MANSANGJI DOSAJI

Appearance:

MR JITENDRA M PATEL for Petitioner

MR MUKTESH V PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/12/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution, the petitioner has challenged the judgement and order dtd. 28/8/1991 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/B.A. 411 of

1989, under Sec. 76 of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter shall be referred to as "the Act" for short)

2. The facts leading to filing of this petition, briefly stated and as averred by the petitioner, are as under;

The disputed land is Survey No.1213 ad-measuring 2 acres 6 gunthas situated in the sim of Sidhhpur, district ; Mehsana. The present respondent NO.1, Bhil Mansingji Dosaji purchased the land as a deemed purchaser under Sec.32(G) of the Act and he had paid up the purchase price of Rs.400/-. This land was subjected to the restricted tenure conditions under Sec.43. He had received the certificate of purchase also in 1962 and the land was entered in his name in the Mutation Register VF 5 by entry No.1931 dated 15/9/1967, which was certified. Thereafter Mansingji seems to have transferred this land by a registered deed dated 6/6/69 for an amount of Rs.5500/- in favour of the present petitioner Vohra Sakirhussein Mohmedhusein and Huseinmahomed Mohmedhusein. Mutation Entry No.2503 dated 25/2/1971 was made in VF 6. However, this Entry was rejected by order dated 22/7/1971 as it violated the new tenure conditions and as such it continued to be shown in the name of Mansingji in VF 6. On account of the alleged breach of the provisions of Sec.43, the Mamlatdar and ALT had started proceedings under Sec.84(C), being Tenancy Case No.255, and he passed orders on 25/9/1978 holding that this was in violation of the provisions of Sec.43 and the transfer had been effected without prior sanction of the Collector and he ordered that the parties to the transfer shall restore the land to the original position within a period of three months. The aforesaid order of the Mamlatdar and ALT was carried in appeal. The Dy. Collector dismissed the appeal but the Gujarat Revenue Tribunal partly allowed the revision application vide its judgement dtd. 1/4/1981 by setting aside the orders of the lower authorities and remanding the matter to the ALT. After remand, the Mamlatdar and ALT passed the order dtd. 15/5/1982 to the effect that the transfer was in violation of Sec.43 of the act and ordered restoration of possession to the original land owner. As the land was not restored, the Mamlatdar and ALT started proceedings under Sec.84(C) and by his order dtd. 16/11/1988 declared that the land was forfeited to the State Government for breach of the provisions of Sec.43 of the Act. The petitioner preferred an appeal against that order, which also came to be dismissed by the Assistant Collector on 21/2/1989. Against the said order the

petitioner preferred a revision application, which also came to be dismissed by the Tribunal vide impugned judgement and order dtd. 28/8/1991.

3. It is averred in para 7 and 8 of the petition that for converting the new tenure land into old tenure land and so as to remove the impediments of Sec.43 of the Act, respondent NO.1 had made an application before the Collector, Mehsana for granting permission to transfer the disputed land in favour of the petitioner and pursuant thereto, the Collector, Mehsana, vide his order dtd. 6/9/82 had called upon respondent No.1 to deposit Nazrana amount of Rs.251.40 ps. (60 times land revenue assessment) in the Government treasury, that thereafter, further proceedings will be taken. Copy of the order dtd. 6/9/1982 of the Collector is produced at Annexure-G to the petition. According to the petitioner, the amount was accordingly deposited in the Government treasury on 8/9/1982, as per the receipt at Annexure-H.

4. At the hearing of this petition, Mr. J.M. Patel, learned counsel appearing for the petitioner has raised the following contentions;

[1] Since the sale deed was executed as far back in the year 1969, and the revenue authorities came to know about the said transaction in 1971, initiation of proceedings under Sec.84(C) of the act, after 7 years was beyond reasonable time and therefore illegal. Strong reliance is placed on the decision of the Apex Court in Mohamad Kavi Mohamad Amin V/s. Fatmabai Ibrahim, reported in (1997) 6 Supreme Court Cases 71 and on decision of Division Bench of this Court in Gujarat Khet Kamdar Union V/s. State of Gujarat and ors., reported in 1999 (3) GLR 2044.

[2] In any view of the mater, the petitioner had done everything which was within his power and by requiring respondent NO.1 to approach the Collector for declaring the land converted from new tenure land to old tenure land and the petitioner had also paid premium fixed by the Collector in the year 1982, hence there was at the highest irregularity in the transaction and there was no absolute prohibition against the transaction in question.

[3] The land was purchased in the year 1969. The petitioner has been running poultry farm on the

land in question and has planted trees on the land in question and the same is the only source of income for the petitioner. The petitioner has also spent considerable amount for improving the land, The petitioner has also constructed cattle sheds. The petitioner has also dug bore on the disputed land spending substantial amount. It is further submitted that when the petitioner has been cultivating and using the land in question for the last 30 years, the petitioner may not be deprived of his land, particularly when under the impugned order, the land is not to go back to the respondent No.1, but it is to be forfeited.

[4] In any view of the matter, the Mamlatdar and ALT could not have passed any order for forfeiting the land to the Government.

5. In Mohmad Kavi Mohmad Amin v/s. Fatmabai Ibrahim, (1997)6 SCC 71, this Court has laid down that where no time limit is prescribed for exercise of power under a statute, it should be exercised within a reasonable time. The principle was laid down in the context of exercise of suo-motu powers by the Mamlatdar and ALT under Sec.84(C) of the Act. Respectively following the said decision, a Division Bench of this Court has also held in Gujarat Khet Kamdar Union V/s. State of Gujarat and ors. 1999 (3) GLR 2044, that although there is no fixed period of limitation for exercise of power under Sec.84(C) of hte Act, such power is required to be exercised within a reasonable time. The Court then laid down the following principles.

"If the authorities initiate proceedings under Sec.84(C) of the Act within one year from the date of certification of the entry in the revenue record, but in the meantime the purchaser has changed his position by constructing property on the land in question or by investing substantial amounts, it would be for the purchaser to contend and show that initiation of proceedings was after unreasonable delay. In short, in case of initiation of proceedings within one year, the onus will be on the purchaser to show why the time taken in initiation of proceedings be treated as unreasonable. On the other hand, if the proceedings under Sec.84(C) of the Act are initiated after a period of one year from the date of certification of the entry, the onus will be on the authority to show why the time taken for initiation of the proceedings should not be

considered to be unreasonable and it would be for the authority to justify its belated action. Here also the purchaser will be at liberty to show any prejudice that might be caused to him by overlooking delay, unless the authority can show fraud or suppression of material facts as indicated above."

In view of the above principle, the Court considered whether either of the respondents had produced any material on the record to show whether there was any fraud or suppression of material facts. None has been found from the impugned judgement nor is there any affidavit-in-reply to that effect. Hence the onus was on the authorities to show that time taken by the authority for initiating the proceedings beyond the period of one year from the date of presentation of the documents before the revenue authority in the year 1971 should not be considered to be unreasonable. It was for the authority to justify its belated action.

It however, appears that above arguments did not appeal to the tribunal, on the following three grounds ;

[1] Such contention was not taken by the petitioner on the previous occasion when the tribunal remanded the matter to the ALT

[2] Entry No.2503 dtd.25/2/1971 in Village Form No.6 was rejected by the Mamlatdar on 22/7/1971 and;

[3] There was breach of Sec.43 of the Act.

6. So far as the first objection is concerned, in the peculiar facts and circumstances of the case, the tribunal was not justified in sustaining the said objection. It does not appear from the order of the tribunal that remand to the ALT was confined to the only certain specified grounds and that the petitioner was precluded from raising objection about initiation of proceedings under Sec.84(C) beyond reasonable time.

7. As regards second objection, it is true that revenue entry No.2503 dtd.25/2/1971 was rejected by the Mamlatdar vide his order dtd. 22/7/1991, but that does not mean that the transaction was not brought to the notice of the revenue authority. Hence, the Mamlatdar and ALT was required to justify the belated action. In this connection, it is necessary to refer to para 13 of the decision of this court in Gujarat Khet Kamdar Union

(Supra). In that case the arguments were that for considering the reasonableness or otherwise the date of registration of the sale deed is relevant date. The Court observed that merely because Sub-registrar of Documents, an officer of the State Government, appointed under the Registration Act or under the Stamp Act accepts documents, the authority under the Tenancy Act cannot be imputed with the knowledge of an illegal or irregular transaction and that it is only when a mutation entry is brought to the notice of the revenue officer like Dy. Mamlatdar or Mamlatdar, that it can be considered as starting point for considering the reasonableness or otherwise of the period after which the proceedings are initiated under Sec.84(C) of the Act. Of course, the mutation entry was certified by the revenue officer and therefore, the Court observed in that case that it was only upon certification of the mutation entry (which is generally done by a Dy. Mamlatdar or a higher officer) that the concerned Government Department can be said to have been posted about the knowledge of such transaction. The aforesaid observations is required to be read in the context of that case, where the land was purchased in July, 1981 and the entries posted by the Talati-cum-Mantri in the village records, were certified by the higher revenue officer in October, 1981.

In this view of the matter, the Tribunal was not justified in rejecting the plea about initiation of proceedings beyond reasonable time on the score of second objection either.

8. Thirdly the tribunal has noted that there was non-compliance with the provisions of Sec.43 of the Act. The material placed on the record of this petition gives some indication that the parties had moved the Collector in the year 1982 for fixing the premium and for permission to convert the land from new tenure land into old tenure land. Unfortunately this contention does not appear to have been raised before the GRT or the lower authorities. Hence, the objection accepted by the Tribunal cannot be said to be without any substance whatsoever. The policy of enacting Sec.43 of the Act and the condition on which the permission is granted by the Collector to convert the land from new tenure land into old tenure land, is very clear. Respondent No.1 was granted the land in question by the State Government on the basis that respondent No.1 or his predecessor in title was cultivating the land as a tenant on 1/4/1957. The land was, therefore, granted to respondent No.1 on a very nominal price. It appears from Mutation Entry NO.1931 dtd. 15/9/1967 that respondent NO.1 was granted

the land in question at the price only of Rs.400/-, and it is therefore, obvious that for this reason, grant is made subject to the prohibition against the transfer of land without permission of the Collector. Such permission is to be granted on payment of premium. If the land was granted to the tenant at a nominal price, fair play requires him to pay the Government a part of the appreciation in the value of the land. It must, therefore, be held that when the landholder who was granted the land as a new tenure land seeks to transfer the land to another party, the premium amount must go into the Government coffers and the other conditions prescribed by the relevant statutory provisions or Government resolution must be complied with.

In the facts and circumstances of this case, Mr. J.M. Patel has submitted that the amount of Rs.251/- was fixed (which was 60 times of the land revenue assessment of Rs.4.19 ps.) as premium. Since that was policy of the Government at the relevant time for converting the land from new tenure to old tenure.

9. However, since there is no reference to any such payment of premium in the impugned judgement of the tribunal or in any orders of the lower authorities, the Court would prefer to remand the matter to the Mamlatdar and ALT, Sidhhpur to examine this question from this angle and to ascertain whether the Collector had fixed the amount for granting permission for converting the land from new tenure into old tenure and whether the requisite amount was paid into the Government treasury at the relevant time or not.

The Mamlatdar and ALT shall, therefore, examine the only question only from this limited angle.

10. In view of the above direction, the impugned judgement dtd. 28/8/1991 of the Gujarat Revenue Tribunal passed in Revision Application NO.TEN/B.A.411 of 1989 (Annexure-M), order dtd. 21/2/1989 passed by the Assistant Collector, Patal (Annexure-L) and order dtd. 16/1/1988 passed by the Addl. Mamlatdar and ALT, Sidhhpur are hereby quashed and set aside. The Mamlatdar and ALT, Sidhhpur shall look into the matter only for the limited purpose for ascertaining whether the amount of premium or the requisite amount for conversion of the disputed land from new tenure to old tenure was fixed by the Collector as per the Collector's letter No.Tenancy/Vashi/2108/82 dtd.6/9/1982, and whether it was paid by the petitioner and has gone into the Government treasury or not. Xerox copy of the Challan dtd.

8/9/1982 produced by the petitioner at Annexure-H to the petition, shall also be looked into by the Mamlatdar and ALT. This exercise shall be undertaken by the Mamlatdar and ALT Sidhhpur within a period of two months from the date of receipt of the writ of this judgement or a certified copy of this judgement whichever is earlier. If the petitioner is required to pay any further amount, for the purpose of conversion of the disputed land from new tenure into old tenure and for purchase thereof, the Mamlatdar and ALT shall inform the petitioner accordingly and the petitioner shall pay such amount to the Government treasury within a period of two months from the date of receipt of the intimation from the Mamlatdar and ALT.

11. In case the petitioner is aggrieved by any order which may be passed by the Mamlatdar and ALT, pursuant to this judgement, it will be open to the petitioner to have further recourse in accordance with law.

12. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to cost.

(M.S. SHAH, J.)

Rafik